No. 15-274

IN THE

Supreme Court of the United States

WHOLE WOMAN'S HEALTH, ET AL.,

PETITIONERS,

v.

JOHN HELLERSTEDT, COMMISSION, TEXAS DEPARTMENT OF STATE HEALTH SERVICES, ET AL. ,

RESPONDENTS.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICUS CURIAE AFRICAN-AMERICAN AND HISPANIC-AMERICAN ORGANIZATIONS IN SUPPORT OF RESPONDENTS

MORSE TAN, ESQ.
Counsel of Record
27W156 Fleming Dr
Winfield, IL 60190
(512) 289-5973
morsetan@gmail.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF ARGUMENT 5

ARGUMENT 6

I. PROTECTING WOMEN FROM SUBSTANDARD ABORTIONISTS AND SUBSTANDARD ABORTION FACILITIES, BOTH OF WHICH DISPROPORTIONATELY IMPACT RACIAL MINORITIES, IS A LEGITIMATE STATE INTEREST. 6

II. THE RACIAL DEMOGRAPHICS OF ABORTION INDICATE THAT MINORITIES ARE DISPROPORTIONATELY IMPACTED BY THE ABORTION INDUSTRY. 16

A. Rooted in the population control movement of the early Twentieth Century, abortion has historically been used to target racial minorities. 16

B. The national statistics regarding abortions committed on minorities demonstrates its disproportional impact. 20

C. Texas minority women fall prey to most abortions in the state. 23

CONCLUSION 24

APPENDIX

Appendix A: Excerpt from 2011 Report by Life Dynamics Incorporated 1a

TABLE OF AUTHORITIES

Cases:

Planned Parenthood of Greater Texas Surgical Health Services v. Abbott ("Abbott II") 748 F.3d 583 (5th Cir. 2014).....15-16

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).....9

Relf v. Weinberger, 372 F Supp. 1196 (D.D.C. 1974).....18

Roe v. Wade, 410 U.S. 113 (1973).....9

Legislative Materials:

Act of July 12, 2013, 83rd Leg., 2d C.S., Ch. 1, 2013 Tex. Gen. Laws 5013.....7

House Research Org., Bill Analysis at 10, Tex. H.B. 2, 83rd Leg., 2d C.S. (July 9, 2013) (House Bill Analysis), available at http://www.hro.house.state.tx.us/pdf/ba832/hb0002.pdf.....7

Other Authorities:

"Abortion Surveillance – United States, 2010," *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report,* Vol. 62, No. 8, Nov. 29, 2013, available at http://www.cdc.gov/mmwr/pdf /ss/ss6208. pdf 8

Arialdi M. Minino, et al., Deaths: Final Data for 2008. National Vital Statistics Reports: Vol. 59 No. 10. Hyattsville, MD: National Center for Health Statistics, 2011, available at http://bit.ly/CDC-DEATHS 23

Barbara Boland, "Planned Parenthood Settles $2 Million Case After Botched Abortion," *CNS News*, Feb. 14, 2014, available at http://cnsnews.com/news/article/barbar-boland/planned-parenthood-settles-2-million-case-after-botched-abortion 12-13

Brady Dennis, "Abortion doctor's trial focuses on immigrant's death after procedure," *The Washington Post*, Apr. 16, 2013, available at https://www.washingtonpost.com/national/health-science/abortion-doctors-trial-focuses-on-immigrants-death-after-procedure/2013/04/16/735ca602-a6de-11e2-a8e2-5b98cb59187f_story.html.....7

Brief of Amicus Curia Black Women's Health Initiative, *NAACP v. Horne*, 2015 WL 8736288 (9th Cir. 2015) 17-18

Centers for Disease Control and Prevention, *Surveillance Summaries: Abortion Surveillance United States 2010*, 62 MMWR, Nov. 29, 2013, available at http:// www.cdc.gov/mmwr/pdf/ss/ss6208.pdf 11, 21, 24

Christopher Tietze, *Induced Abortion: A World Review*, 1983, 5th Ed (1983). 20

Clenard Childress, MAAFA 21: A documentary on eugenics and genocide, YOUTUBE, (Oct. 27, 2012), available at https://youtu.be/0eWxCRReTV4 ..... 22, 23

Conor Friedersdorft, "Why Dr. Kermit Gosnell's Trial Should Be a Front-Page Story," *The Atlantic,* Apr. 12, 2015, available at http://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/ 7

Dennis Byrne, "Was Planned Parenthood licensed to do the kind of abortion that killed Tonya Reaves?", *ChicagoNow,* July 25, 2012, available at http://www.chicagonow.com/dennis-byrnes-barbershop/2012/07/was-planned-parenthood-licensed-to-do-the-kind-of-abortion-that-killed-tonya-reaves/ 12

Donald T. Critchlow, INTENDED CONSEQUEUENCES: BIRTH CONTROL, ABORTION, AND THE FEDERAL GOVERNMENT IN MODERN AMERICA 144 (Oxford Press 1999) 18, 19

Dr. Alveda King, *How Can the Dream Survive?,* ST. LOUIS REVIEW, Nov. 5, 2015, available at http://stlouisreview.com/article/2015-11-05/how-can-dream-survive 6

Dr. Alveda King, MAAFA 21: A documentary on eugenics and genocide, YOUTUBE, (Oct. 27, 2012), available at https://youtu.be/0eWxCCReTV4 23

Grand Jury Rpt., *In re County Investigating Grand Jury XXIII*, No. 0009901-2008. 2011 WL 711902 (1st Jud. Dist. Pa. Jan. 14, 2011), available at http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf 8, 10-12

Guttmacher Institute – Induced Abortion in the United States – July 2014 available at http://www.guttmacher.org/pubx/fb_induced_abortion.html.....21

Guttmacher Institute, National Reproductive Health Profile, available at http://bit.ly/2008NatlStats.....23

Jones v. Planned Parenthood, No. 20013 L 00076 (Cir. Ct. of Cook Cnty., Ill.), Deposition of Mandy Gittler, M.D., Aug. 22, 2013, available at http://operationrescue.org/pdfs/Deposition%20of%20Mandy%20Gittler,%20M.D..pdf 13

Kim Severson, "Thousands Sterilized, a State Weighs Restitution," *NY Times*, Dec. 9, 2011, available at http://www.nytimes.com/2011/12/10/us/redress-weighed-for-forced-sterilizations-innorthcarolinahtml?pagewanted=all.....17

Mark Crutcher, MAAFA 21: A documentary on eugenics and genocide, YOUTUBE (Oct. 27, 2012), available at https://youtu.be/0eWxCRReTV4.....20

New York State Department of Health, Vital Statistics Table 23: Induced Abortion and Abortion Ratios by Race/Ethnicity and Resident County New York State 2013, available at http://www.health.ny.gov /statistics/vital_statistics/2013/table23.htm 21-22

Operation Rescue, *Special Report: Secret Ohio Department of Health Docs Reveal 47 Horrific Botched Abortions, Countless Safety Violations and More,* (May 26, 2015), available at http://www.operationrescue.org/archives/special-report-secret-ohio-department-of-health-docs-reveal-47-horriffic-bothched- abortions-countless-safety-violations-and-more/..... 14, 15

Randy Beck, *Prioritizing Abortion Access over Abortion, Safety in Pennsylvania,* 8 U. ST. THOMAS J.L. & PUB. POLICY 33, (2013)..... 12

Report of Expert Witness filed in support of Complaint, *Jones v. Planned Parenthood* (Cir. Ct. of Cook Cnty., Ill., Jan. 3, 2013) (No. 20013 L 0076)..... 13

Samuel W Calhoun, *Stopping Philadelphia Abortion Provider Kermit Gosnell and Preventing Others Like Him: An Outcome That Both Pro-Choicers and Pro-Lifers Should Support,* 57 VILL. L. REV 1 (2012)..... 12

"State of Shame: N.C. sterilization survivors fight for justice," NBC's Rock Center, Nov. 7, 2011, available at http://www.nbcnew. com/video/rock-center/45201021..... 16

Statement of Walter B. Hoye II, NATIONAL BLACK PRO-LIFE COALITION ONLINE, available at http://www.blackprolifecoalition.org/speakers/walterhoye.html 5

Texas Department of State Health Services, Texas Population, 2010 (Historical Race Ethnicity Categories), available at http://www.dshs.state.tx.us/chs/popdat/ST2010.shtm 23, 24

Texas House of Representatives, HOUSE JOURNAL, 83rd Leg. 2d C.S., July 9, 2013, HB2 Debate – Second Reading, Testimony of Rep. Jodie Laudenberg 9-10

Zoe Dutton, "Abortion's Racial Gap," *The Atlantic,* Sept. 22, 2014, available at http://www.theatlantic.com/health/archive/2014/09/abortions-racial-gap/380251/ 8

INTEREST OF AMICUS CURIAE[1]

Ryan Bomberger, Chief Creative Officer, The Radiance Foundation is a non-profit, educational organization established to affirm that every human life has purpose. Through ad campaigns, multimedia presentations, community outreaches, and citizen journalism, Radiance illuminates the intrinsic value we all possess. We motivate people to peacefully and positively affect the world around them. Radiance works on a local and national level to advance a culture of life that rejects abortion, promotes adoption, celebrates intact married families, and protects the free speech that makes this messaging possible.

Mark Gonzales, United States Hispanic Action Network

The **United States Hispanic Action Network** exists to train, educate, motivate and equip citizens, Hispanics in particular, to change the culture to reflect biblical truth. We reach tens of thousands of Hispanic Americans and advocate a pro-life position. Recognizing the disproportionate affect that abortion is having on the Latino community, we supported HB2 in Texas. As a Dallas, Texas based organization, we have particular interest in this Supreme Court case.

---

[1] Parties to these cases have consented to the filing of this brief and letters indicating their consent are on file with the Clerk. *Amicus* states that no counsel for a party authored this brief in whole or in part, and no person other than the *amicus* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

Catherine Davis, President, The Restoration Project

The Restoration Project is a non-profit organization dedicated to rebuilding families, promoting the sanctity of life, and providing related educational materials, in order to transform American public policy and culture's impact on Black life. TRP works with pastors, ministry leaders and organizations to restore a culture of uprightness, evenhandedness, and virtue.

Day Gardner, President, National Black Pro-life Union

The National Black Pro-Life Union was founded to serve as a clearing house in order to coordinate the flow of communications among African American pro-life groups and individuals in order to better network and combine resources. Headquartered in Washington, DC, we are committed to working with pro-life members of the U.S. House and Senate to expand protections for unborn children.

Walter & Lori Hoye

The **Issues4Life Foundation** is a non-profit organization that targets and works directly with Black American leaders nationwide to strengthen their stand against abortion on demand. Our mission is to end abortion by raising awareness of the impact of abortion and the biblically immoral implementation of unethical biotechnology in Black

America. We are committed to protecting both the civil and human rights of the child in the womb by recognizing the inherent dignity and inalienable rights of all members of the human family, so that in law and in practice every life is valued from the womb to the tomb. We understand that without life, nothing matters.

Pastor Stephen Broden, Protect Life and Marriage Texas works to uphold the Judeo-Christian ethic established by our Founding Fathers in our society with the view of securing liberty for marriages, the American family and the life of the unborn.

Bishop E. W. Jackson
STAND Foundation, Inc. ("STAND") is a nonprofit organization dedicated to bringing people together across racial and cultural lines to restore America's Judeo-Christian heritage and values, which includes the protection of unborn human life as the first priority. STAND is a nationwide organization with representation in states across America. It has a subsidiary organization of MINISTERS TAKING A STAND, made up of pastors committed to upholding the sacredness of life, marriage and family as God ordained them.

Dean Nelson, Chairman, The Douglass Leadership Institute advocates righteousness, justice, liberty and virtue. Our mission is to educate, equip and empower faith-based leaders to embrace and apply biblical principles to life and in the market place. Our strategic pillar, to empower black

faith-based leaders to impact the marketplace, specifically highlights the disproportionate impact that abortion has had in the African American community.

National Black Prolife Coalition
The **National Black Prolife Coalition** is a network of organizations and churches with more than a thousand supporters committed to restoring life, family and hope in the black community. The Coalition's mission is to end abortion by restoring a culture of life and the foundation of family in the black community.

Troy Rolling, Chairman, Frederick Douglass Foundation is a national education and public policy organization with local chapters across the United States which brings the sanctity of free market and limited government ideas to bear on the hardest problems facing our nation. We are a collection of proactive individuals committed to developing innovative and new approaches to today's problems with the assistance of elected officials, scholars from universities and colleges, and community activists.

Rev. Eric Wallace, Ph.D., Freedom's Journal Institute
Freedom's Journal Institute for the Study of Faith and Public Policy is a 501(c)(3). Our mission is devoted to the research, education, and the advancement of public policy that promotes: Responsible government, Individual liberty and

fidelity, Strong family values, and Economic empowerment (R.I.S.E Principles), with a biblical perspective. We believe that the gospel message has both political and public policy implications, which include long term ministry goals such as "proclaiming freedom for the prisoners, recovery of sight for the blind, and releasing of the oppressed."

Urban Family Communications works to inform and empower black families to grow into mature disciples by wisely applying biblical truth to our issues and interests. We stand for truth, wisdom, and empowerment.

SUMMARY OF ARGUMENT

The Civil Rights movement has not ended. Minority lives still matter. Whether it is the rights of the Latina or African-American mother or the rights of her direct descendents, they *all* matter. The scourge of abortion has reached genocidal proportions, destroying the lives of our youngest minority citizens and adversely impacting their mothers. In the words of amicus Issues4Life Foundation's Walter Hoye, "The impact of abortion in the African-American community is the Darfur of America."[2] A faithful application of HB2 directly protects pregnant women, and in its indirect effects, potentially their progeny. Such laws help to decrease the disproportionate harm to minority

---

[2] *Statement of Walter B. Hoye II*, NATIONAL BLACK PRO-LIFE COALITION ONLINE, available at http://www.blackprolifecoalition.org/speakers/walterhoye.html (last accessed 31 Jan. 2016).

women in the states that pass them, and as such, should be upheld by this Court. After all, protecting life, whether of mothers, fathers and our children, is the pre-requisite right for protecting every other right. Without it, talk about all other civil rights turns moot. Hence, this brief seeks to advance the Civil Rights movement in its most indispensable keystone, without which the bridge collapses.

ARGUMENT

In reference to her uncle Martin Luther King, Jr.'s dream, Dr. Alveda King queries, ""How can the dream survive if we murder our children?"[3]. The survivors in future generations will be astonished at the massive blind spot that this simple but profound question uncovers for our current period of history. The unanimous consensus of all major medical textbooks waits for the law to reflect what it already knows. In the meantime, minority women and their offspring suffer the majority of what the abortion industry inflicts in Texas and other states. This Court can take a substantial step towards fulfilling the dream by upholding the judgment of the 5th Circuit regarding HB2 against the attempts to strike down its sensibly protective measures for women directly and potentially, indirectly for their progeny.

I. PROTECTING WOMEN FROM SUBSTANDARD ABORTIONISTS AND

---

[3] Dr. Alveda King, *How Can the Dream Survive?*, ST. LOUIS REVIEW, Nov. 5, 2015, available online at http://stlouisreview.com/article/2015-11-05/how-can-dream-survive (last accessed 31 Jan. 2016).

SUBSTANDARD ABORTION FACILITIES, BOTH OF WHICH DISPROPORTIONATELY IMPACT RACIAL MINORITIES, IS A LEGITIMATE STATE INTEREST.

In 2013, Texas passed HB2 in response to the Kermit Gosnell scandal.[4] The scandal, which revealed that at least one woman[5] and seven newborns had lost their lives, and which resulted in a life sentence without the possibility of parole based on first-degree murder and involuntary manslaughter convictions, was widely-pronounced to be a preventable tragedy caused by the errors of government administration: "multiple local and state agencies [we]re implicated in an oversight failure that is epic in proportions[.]"[6] The Gosnell case is

---

[4] Act of July 12, 2013, 83rd Leg., 2d C.S., ch. 1, 2013 Tex. Gen. Laws 5013; House Research Org., Bill Analysis at 10, Tex. H.B. 2, 83rd Leg., 2d C.S. (July 9, 2013) (House Bill Analysis), http://www.hro.house.state.tx.us/pdf/ba832/hb0002.pdf (stating that higher health care standards for women seeking abortions will help prevent a "Kermit Gosnell" situation).

[5] The woman's name was Karnamaya Mongar. She survived two decades in a Nepalese refugee camp before immigrating to America. *See* Brady Dennis, "Abortion doctor's trial focuses on immigrant's death after procedure," *The Washington Post*, Apr. 16, 2013, available at https://www.washingtonpost.com/national/health-science/abortion-doctors-trial-focuses-on-immigrants-death-after-procedure/2013/04/16/735ca602-a6de-11e2-a8e2-5b98cb59187f_story.html (last accessed Jan. 29, 2013).

[6] Conor Friedersdorf, "Why Dr. Kermit Gosnell's Trial Should Be a Front-Page Story," *The Atlantic*, Apr. 12, 2015, available online at http://www.theatlantic.com/national/archive/2013/04/why-dr-kermit-gosnells-trial-should-be-a-front-page-story/274944/ (last

notable in many respects, not least of which is that it exposed disturbing *racial* dimensions of abortion, suggesting that providers routinely discriminate against minority women, who suffer disproportionately from abortion procedures in comparison to their white counterparts.[7]

In response to the atrocities, Texas lawmakers sought to ensure that the gruesome practices[8] witnessed in Pennsylvania were not replicated in their state. Thus, to prevent Gosnell-like clinics from opening or continuing to operate, they passed HB2, and the bill's restrictions *can be properly*

---

accessed Jan. 28, 2016).

[7] *See, e.g.* "Abortion Surveillance – United States, 2010," *Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report*, Vol. 62, No. 8, Nov. 29, 2013, available online at http://www.cdc.gov/mmwr/pdf/ss/ss6208.pdf (last accessed 29 Jan. 2016) (stating that in 2010, 56.7% of abortions reported to the U.S. Centers for Disease Control nationwide were performed on Hispanic or Black women); Zoe Dutton, "Abortion's Racial Gap," *The Atlantic*, Sept. 22, 2014, available at http://www.theatlantic.com/health/archive/2014/09/abortions-racial-gap/380251/ (last accessed 29 Jan. 2016) (citing study by U.S. Centers for Disease Control and Prevention confirming that African-American women are more likely to have abortion than white women).

[8] *See, e.g.* Grand Jury Rpt., *In re Cnty. Investigating Grand Jury XXIII*, NO. 0009901-2008, 2011 WL 711902 (1st Jud. Dist. Pa. Jan. 14, 2011), available online at http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf at page 4 (last accessed 29 Jan. 2016) ("Gosnell had a simple solution for the unwanted babies he delivered: he killed them. He didn't call it that. He called it 'ensuring fetal demise.' The way he ensured fetal demise was by sticking scissors into the back of the baby's neck and cutting the spinal cord. He called that 'snipping.'").

viewed as attempting to minimize injuries to African American and Latina women by raising the standard of care, and reducing the risk of substandard facilities and personnel, used in abortion procedures. This is a legitimate state interest under *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), because even though the law may have "the incidental effect of making it more difficult or more expensive to procure an abortion," the law's "valid purpose[s]" – here, protecting women's, and particularly minority women's health, among others – "do not strike at the right [to obtain an abortion] itself." *Id.* at 874; *see also*, *Roe v. Wade*, 410 U.S. 113, 162 (1973) (The State "does have an important and legitimate interest in preserving and protecting the health of the pregnant woman and it has still another important and legitimate interest in protecting the potentiality of human life.").

Further consideration of the Pennsylvania tragedies confirms the legitimacy behind HB2's added stringency on both Texas abortion-providing physicians (the admitting privileges requirement) and abortion facilities (the ambulatory surgical center requirement). In essence, Texas lawmakers wanted to prevent two all-too-real possibilities: first, that a physician, like Dr. Gosnell (who could not properly treat complications) be allowed to practice, and second, that filthy Gosnell-like clinics with rusty, outdated equipment be allowed to operate. Texas lawmakers thought that all women, and

particularly minority women, deserved to be protected from these dangerous possibilities.[9]

In Pennsylvania, the abortion clinic operated by Dr. Gosnell intentionally ignored standard safety precautions and recklessly risked the health of minorities. Regarding Dr. Gosnell's practices, the Pennsylvania Grand Jury that indicted him reported, "[o]n those rare occasions when the patient was a *white woman* from the suburbs, Gosnell insisted that he be consulted at every step."[10] In contrast, the Grand Jury noted that *black* women were subjected to "practices .that defy any medical or even common-sense explanation," such as Gosnell "photographing women from Liberia and other African countries who had undergone clitorodectomies, the surgical removal of the clitoris."[11]

The testimony of Tina Baldwin, one of Gosnell's unlicensed and untrained longtime employees, is provided in the same report: "Q: Okay. Was [Dr. Gosnell] present when you did that medication? A: No, no. And sometimes he asked them – but it was a race thing. Q: What do you mean? A: It was – he

---

[9] *Cf.* Tex. House of Representatives, HOUSE JOURNAL, 83rd Leg. 2d C.S., July 9, 2013, HB2 Debate – Second Reading, Testimony of Rep. Jodie Laubenberg, sponsor of HB2, at page S3 ("Again, anything that's going to improve the facility, that's going to help get better health care to this woman in case any complication should arise, is always a good thing.").

[10] Grand Jury Rpt. at 7, *In re Cnty. Investigating Grand Jury XXIII*, NO. 0009901-2008, 2011 WL 711902 (1st Jud. Dist. Pa. Jan. 14, 2011) (emphasis added).

[11] *Id.* at 73.

sometimes he used to – okay. Like if a girl – the black population was – African population was big here. So he didn't mind you medicating your African-American girls, your Indian girl, but if you had a white girl from the suburbs, oh, you better not medicate her. You better wait until he go in and talk to her first. And one day I said something to him and he was like, that's the way of the world. Huh? And he brushed it off and that was it."[12] Baldwin also testified that "white patients often did not have to wait in the same dirty rooms as black and Asian clients. Instead, Gosnell would escort them up the back steps to the only clean office – Dr. O'Neill's – and he would turn on the TV for them."[13]

Given that Hispanic-Americans receive the most abortions of any racial group in Texas[14] and that African-Americans receive the highest proportion of abortions relative to their percentage of the population,[15] the HB2 standards would protect a large number of minority women – women similar, in many respects, to those whose procedures Gosnell botched with criminal neglect and disdain. Since the events that transpired in Pennsylvania were

---

[12] *Id.* at 62.

[13] *Id.*

[14] Centers for Disease Control and Prevention, Abortion Surveillance United States, 2010, http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6208a1.htm#tab12 (last visited on February 2, 2016.); Texas Dept. of State Health Services, Texas Population, 2010 (Historical Race Ethnicity Categories), http://www.dshs.state.tx.us/chs/popdat/ST2010.shtm (last visited February 2, 2010)

[15] *Id.*

implicitly condoned by public authorities,[16] Texas could not afford to turn a blind eye to the possibility of misconduct: the health and safety of minority women were clearly interests worth protecting through legislation, and ones both pro-lifers and pro-choice advocates could rally behind.[17]

The scope of the problem went *beyond* Gosnell, however – news around the country indicated the need for additional restrictions. In Chicago around the same time as the Gosnell case, for example, a woman by the name of Tonya Reaves underwent three rounds of dilation and evacuation (D&E) procedures in a Planned Parenthood that was not a licensed ambulatory surgical center.[18] Reaves, a

---

[16] Randy Beck, *Prioritizing Abortion Access over Abortion Safety in Pennsylvania*, 8 U. ST. THOMAS J.L. & PUB. POL'Y 33, 37-38 (2013) ("Pennsylvania officials gave Gosnell plenty of reason to believe that noncompliance with the law would be overlooked."); *see also*, Grand Jury Rpt. at 137, *In re Cnty. Investigating Grand Jury XXIII*, NO. 0009901-2008, 2011 WL 711902 (1st Jud. Dist. Pa. Jan. 14, 2011) ("We discovered that Pennsylvania's Department of Health has deliberately chosen not to enforce laws that should afford patients at abortion clinics the same safeguards and assurances of quality health care as patients of other medical service providers. Even nail salons in Pennsylvania are monitored more closely for client safety.").

[17] *See* Samuel W. Calhoun, *Stopping Philadelphia Abortion Provider Kermit Gosnell and Preventing Others Like Him: An Outcome That Both Pro-Choicers and Pro-Lifers Should Support*, 57 VILL. L. REV. 1 (2012).

[18] *See* Dennis Byrne, "Was Planned Parenthood licensed to do the kind of abortion that killed Tonya Reaves?", ChicagoNow, Jul. 25, 2012, available online at http://www.chicagonow.com/dennis-byrnes-barbershop/2012/07/was-planned-parenthood-licensed-to-do-

healthy 24-year-old black woman, was 16 weeks pregnant at the time she chose to have an abortion. After the procedure was botched, Reaves bled heavily and at times uncontrollably for five and a half hours without curative medical treatment and ultimately died from the hemorrhaging.

Dr. Mandy Gittler, the physician who performed the abortion, did not have admitting privileges at Northwestern Memorial Hospital,[19] the hospital to which Reaves was eventually transferred. Dr. Gittler was not a board certified Obstetrician/Gynecologist. Reaves's autopsy revealed a perforated uterus as the cause of death. Another abortionist, a board certified doctor in Obstetrics/Gynecology, concluded: "Based on my review of the records, I am of the opinion that a reasonable and meritorious malpractice action exists against Planned Parenthood and Dr. M. Gittler..."[20]

---

the-kind-of-abortion-that-killed-tonya-reaves/ (last accessed Jan. 29, 2016); Barbara Boland, "Planned Parenthood Settles $2 Million Case After Botched Abortion," *CNS News*, Feb. 14, 2014, available online at http://cnsnews.com/news/article/barbara-boland/planned-parenthood-settles-2-million-case-after-botched-abortion (last accessed 29 Jan. 2016) (noting that, in light of Ms. Reaves's death, an Illinois state representative "proposed a bill to amend the Ambulatory Surgical Treatment Center statute, to close a loophole that allow[ed] the clinics to remain exempt.").

[19] *Jones v. Planned Parenthood*, No. 2013 L 000076 (Cir. Ct. of Cook Cnty., Ill.), Depo. of Mandy Gittler, M.D., Aug. 22, 2013, p. 136-7, available online at http://operationrescue.org/pdfs/Deposition%20of%20Mandy%20Gittler,%20M.D..pdf (last accessed 29 Jan. 2016).

[20] Report of Expert Witness filed in support of Complaint, *Jones v. Planned Parenthood* (Cir. Ct. of Cook Cnty., Ill., Jan. 3, 2013) (No. 20013 L 0076).

If Dr. Gittler had admitting privileges at Northwestern Memorial Hospital or another nearby hospital, Tonya Reaves could very well still be alive today.

LaKisha Wilson, a 22 year-old black woman from Ohio, also died as a result of troubling complications from a late term abortion.[21] Her death could have been prevented if Preterm, the abortion clinic, had been properly equipped to provide necessary emergency care when she went into cardiac arrest from hemorrhaging. Medical records show that the EMS was called an entire nine minutes *after* Wilson had already suffered cardiac arrest and stopped breathing.[22] Upon arrival at the clinic, EMS personnel were further delayed from reaching Wilson due to a malfunctioning elevator. When the EMS personnel finally reached her, they found Wilson lying pulseless on the table with a pediatric mask positioned on her face, and her IV somehow pulled out of her by mistake amidst the

---

[21] LaKisha Wilson's medical records are unclear whether the fetus age was 19 or 23 weeks. *See Operation Rescue, Special Report: Secret Ohio Department of Health Docs Reveal 47 Horrific Botched Abortions, Countless Safety Violations and More,* (May 26, 2015), available at http://www.operationrescue.org/archives/special-report-secret-ohio-department-of-health-docs-reveal-47-horrific-botched-abortions-countless-safety-violations-and-more/ (citing Abortiondocs.org, Medical Records for LaKisha Wilson, Ohio Department of Health and Human Services, (Apr. 3, 2014), available at http://www.abortiondocs.org/wp-conten/uploads/2015/05/Wilson-Preterm-Record.pdf and http://abortiondocs.org/wp-content/uploads/2015/05/Wilson-EMS-Report.pdf

[22] *Id.* at 43.

chaotic scene. The EMS personnel changed the child-sized mask to an appropriate adult mask so that Wilson could properly receive oxygen and administered emergency care before attempting to transfer her to a nearby hospital. As yet another obstacle, EMS personnel were not able to intubate Wilson and begin other lifesaving measures until she reached the ambulance because the malfunctioning elevator was not large enough for her to be carried out laying flat on the gurney.[23]

At the end of this disturbing scramble to receive proper care, Lakisha Wilson died at the hospital. Her father wrote about Wilson's death, "My daughter, LaKisha Wilson, died under suspicious circumstances."[24] LaKisha Wilson's death was a needless tragedy and an example of seriously inadequate medical protections for women undergoing procedures in substandard abortion clinics.

Even one life lost due to substandard abortionists and their substandard facilities is too many. HB2 would help prevent these types of tragedies from happening to many women seeking an abortion, including the substantial number of minority women who would be impacted. Since pro-choice advocates have at times indicated that they

---

[23] Medical records for LaKisha Wilson, Ohio Department of Health and Human Services, April 3, 2014, at page 13, available at http://www.abortiondocs.org/wp-content/uploads/2015/05/Wilson-Preterm-Record.pdf and at http://abortiondocs.org/wp-content/uploads/2015/05/Wilson-EMS-Report.pdf.

[24] *Id.* at 118.

want the provision of abortions to include HB2's safeguards,[25] there should be no conflict on this point. HB2 advances the legitimate state interest in protecting the lives and health of women, including for the minority groups in Texas, who obtain more abortions than the white population.[26]

II. THE RACIAL DEMOGRAPHICS OF ABORTION INDICATE THAT MINORITIES ARE DISPROPORTIONATELY IMPACTED BY THE ABORTION INDUSTRY.

A. Rooted in the population control movement of the early Twentieth Century, abortion has historically been used to target racial minorities.

Throughout the twentieth century, thirty-one states had Eugenics Commissions that sterilized women, some as late as 1977. Sterilization decisions were often based on whom officials deemed to be "feeble-minded," and many times those individuals were poor African-Americans for whom the state had an incentive to reduce public welfare entitlements.[27]

---

[25] *See, e.g.* the National Abortion Federation's own prior recommendation that abortion patients use a doctor who "'[i]n the case of emergency' can 'admit patients to a nearby hospital (no more than 20 minutes away).'" *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott* ("Abbott II"), 748 F.3d 583, 595 (5th Cir. 2014) (quoting National Abortion Federation, *Having an Abortion? Your Guide to Good Care* (2000)).

[26] *Supra* n.14-15.

[27] *See, e.g.* "State of Shame: N.C. sterilization survivors fight for justice," NBC's Rock Center, Nov. 7, 2011, video news footage available online at http://www.nbcnews.com/video/rock-

These programs "affected black Americans disproportionately."[28]

The Black Women's Health Initiative provides a partial history of the practices directed at reducing the black population in America:

> [I]n the first decade of the twentieth century, twelve states passed involuntary mandatory sterilization laws that, in practice, primarily targeted African-Americans. Government funded doctors continued sterilizations even after states repealed involuntary sterilization laws. In the 1930s and 1940s, the North Carolina Eugenics Commission sterilized 8,000 'mentally deficient persons,' which disproportionately included 5,000 African-Americans, a majority of those sterilized under this category. In 1954, all of the people sterilized at the South Carolina State Hospital were African-American women. [T]eaching hospitals performed unnecessary hysterectomies on poor Black women as practice for

---

center/45201021 and https://www.youtube.com/watch?v=Nshj9rCTPdE (last accessed 29 Jan. 2016).

[28] Kim Severson, "Thousands Sterilized, a State Weighs Restitution," *NY Times*, Dec. 9, 2011, available online at http://www.nytimes.com/2011/12/10/us/redress-weighed-for-forced-sterilizations-innorthcarolinahtml?pagewanted=all (last accessed Jan. 29, 2016).

> their medical residents. This sort of abuse was so widespread in the South that these operations came to be known as 'Mississippi appendectomies.' The doctors who performed these surgeries later said that they thought sterilization would help stem population growth; one chief of surgery explained that 'a girl with lots of kids, on welfare, and not intelligent enough to use birth control, is better off being sterilized.' [N]ot intelligent enough to use birth control is often a code phrase for 'black' or poor.[29]

"From the 1960s to the early 1970s, between 50,000 and 75,000 Black women were sterilized each year, often with federal funds."[30] The facts of the Relf case vividly illustrate the abuses of the period. Two young sisters, Minnie Lee Relf, aged twelve and Mary Alice Relf, aged fourteen, were sterilized in Montgomery, Alabama through a federally-funded program. The episode began when two representatives of the federally financed county Community Action Agency called on Minnie Relf, an illiterate welfare mother of four, to instruct her that two of her daughters needed shots. Trusting the agency had the best interest of her children in mind,

---

[29] Brief of Amicus Curia Black Women's Health Initiative, *NAACP v. Horne*, 2015 WL 8736288 at 10 (citations omitted).
[30] *Id.*, citing *Relf v. Weinberger*, 372 F. Supp. 1196, 1199 (D.D.C. 1974), vacated on other grounds, 565 F.2d 722 (D.C. Cir. 1977).

Mrs. Relf put her "X" on a paper without realizing that she was allowing a sterilization operation for her daughters, Minnie Lee and Mary Alice. The sterilization of the Relf sisters became national news when Joseph Levin, a lawyer, filed suit against the federal government.[31]

Incidents like these triggered some African-American leaders' worst fears about government-funded family planning programs. "Birth control is just a plot just as segregation was a plot to keep blacks down. It is a plot rather than a solution. Instead of working for us and giving us our rights—you reduce us in numbers and do not have to give us anything."[32] Black leaders such as Julius Lester, Dick Gregory, Daniel H. Watts, and H. Rap Brown went so far as to describe abortion and family planning as "black genocide," calling upon blacks to eschew these practices to avoid "race suicide."[33]

The legal status of abortion has had a racial impact, in continuity with the racial dimension of eugenics: "Studies from the CDC show that prior to the legalization of abortion, approximately 80% of all illegal abortions were done on white women. One study in New York even found that white women had five times as many abortions as black women, but at the moment abortion became legalized, that

---

[31] Donald T. Critchlow, INTENDED CONSEQUENCES: BIRTH CONTROL, ABORTION, AND THE FEDERAL GOVERNMENT IN MODERN AMERICA 144 (Oxford Press 1999).

[32] *Id.* at 61 (quoting communication between Elsie Jackson, PPFA field consultant to Alan F. Guttmacher, dated Apr. 4, 1966, subject file, Negro File, PPFA).

[33] Critchlow, *supra* n. 39at 142.

began to reverse. That's why the legalization of abortion was so crucial to the eugenics movement. Legalization created the ability to market abortion in the black community, and from a eugenics standpoint, that changed everything."[34]

In 1973, Dr. Christopher Tietze wrote a study of abortion demographics for the Population Council, a New York based eugenics organization. He confirmed that when abortion is illegal, the abortion rate of white women is much higher than black women, but that when abortion is legalized, the trend reverses.[35] He was a consultant for Planned Parenthood and the National Abortion Federation when publishing these results.

The racial aspect of the population control movement expressed itself through eugenics and found a "final solution" in abortion. Historically, minorities have found themselves in the crosshairs of a movement to reduce their population.

B. The national statistics regarding abortions committed on minorities demonstrates its disproportional impact.

Nationwide, according to the Center for Disease Control, "among the 28 areas that reported cross-classified race/ethnicity data for 2010 Non-

---

[34] Mark Crutcher, MAAFA 21: A documentary on eugenics and genocide, YOUTUBE (Oct. 27, 2012), available at https://youtu.be/0eWxCRReTV4 at 1:06:53 to 1:07:29

[35] Christopher Tietze, Induced Abortion: A World Review, 1983, 5th Ed. (1983).

Hispanic white women had the lowest abortion rates (8.6 abortions per 1,000 women aged 15–44 years) and ratios (141 abortions per 1,000 live births), whereas non-Hispanic black women had the highest abortion rates (31.8 abortions per 1,000 women aged 15–44 years) and ratios (483 abortions per 1,000 live births)."[36] Almost four times as many African-American pregnancies ending in abortion as compared with Caucasian-Americans surely counts as disproportional.

According to Guttmacher Institute, the research arm of Planned Parenthood, African American women account for almost 40% of abortions in the US, although African Americans account for just 13% of the population. Hispanic women account for 25% of abortions.[37] In New York City, more African-American babies are aborted than are born alive. The New York State Department of Health's most recent (2013) vital statistics report reveals that for every 1,000 African-American babies born alive in New York City, 1,180 were aborted. Comparatively, 240 abortions were performed for every 1,000 live births among whites and there were 610 abortions for every 1,000 Hispanic live births.[38] In other

---

[36] Centers for Disease Control and Prevention, *Surveillance Summaries: Abortion Surveillance United States 2010*, 62 MMWR, November 29, 2013, at 7, http://www.cdc.gov/mmwr/pdf/ss/ss6208.pdf

[37] Guttmacher Institute – Induced Abortion in the United States – July 2014 available at http://www.guttmacher.org/pubx/fb_induced_abortion.html

[38] New York State Dep't of Health, Vital Statistics Table 23: Induced Abortion and Abortion Ratios by Race/Ethnicity and Resident County New York State 2013,

words, the prevalence of abortion was more than two and a half times higher among Hispanic-Americans and almost five times higher among African-Americans compared to Caucasian-Americans.

Clenard Childress expresses the situation in this manner: "African women, though they make up 12% of the population, have 37% of the abortions in the U.S. An African-American baby is almost 5 times more likely to be aborted than a white child. The abortion industry at this point kills as many African-American people in four days as the Klan killed in 150 years. You can truly say that the most dangerous place for an African-American to be is in the womb of his/her African-American mother."[39] To give further perspective to the impact on African-Americans, "Since 1973, legal abortion has killed more African-Americans than AIDS, cancer, diabetes, heart disease and violent crime combined. Every week, more blacks die in abortion clinics than were killed in the entire Vietnam War."[40]

Dr. Alveda King, the niece of Martin Luther King, Jr., describes the situation as follows: "This same attitude has allowed Planned Parenthood and other members of the abortion industry to carry out this genocide right under our very noses. Right now in America, about half of our babies are being killed in the womb, and in certain parts of America, more

---

http://www.health.ny.gov/statistics/vital_statistics/2013/table23.htm

[39] Clenard Childress, MAAFA 21: A documentary on eugenics and genocide, YOUTUBE, (Oct. 27, 2012), available at https://youtu.be/0eWxCRReTV4 at 1:04:57 to 1:05:40

[40] *Id.* at 1:04:27

of our babies are being aborted than are being born."[41]

Based on CDC and Guttmacher Institute data in 2008, there were in the African-American community 5,686 HIV deaths, 8,206 deaths from homicides, 11,934 diabetes deaths, 12,215 accidental deaths, 63,279 cancer deaths, and 69,918 deaths from heart disease. All of these causes of death equal 285,522 combined. The number of deaths through abortions reached 363,705 exceeding the sum of all of these other causes.[42]

C. Texas minority women fall prey to most abortions in the state.

In Texas, the greatest number of abortions were performed on Hispanic-Americans, 38.8% of the total, which is higher than their percentage of the population.[43] Caucasian-Americans accounted for 30.7% of abortions while making up 70.4% of the

---

[41] Dr. Alveda King at *Id.* at 1:06:04 to 1:06:24

[42] Arialdi M. Minino, et al., Deaths: Final data for 2008. National vital statistics reports; Vol. 59 No. 10. Hyattsville, MD: National Center for Health Statistics. 2011 available at http://bit.ly/CDC-DEATHS; and Guttmacher Institute, National Reproductive Health Profile, http://bit.ly/2008NatlStats (last visted February 2, 2016)

[43] Centers for Disease Control and Prevention, Abortion Surveillance - United States, 2010, http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6208a1.htm#tab12 (last visited on February 2, 2016.); Texas Dept. of State Health Services, Texas Population, 2010 (Historical Race Ethnicity Categories), http://www.dshs.state.tx.us/chs/popdat/ST2010.shtm (last visited February 2, 2010);

Texas population.[44] For this number to be proportional, it would need to more than double. African-Americans came in at 24.9% of Texas abortions, although they only make 11.8% of the state population.[45]

Texas has 94 Zip codes with at least one abortion facility. Of those, only 22 are not disproportionately black and/or Hispanic. Appendix A demonstrates this data in chart form. In sum, HB2 would protect minority women the most in Texas.

CONCLUSION

For the reasons set forth above, this Court should uphold HB2 as consonant with this Court's jurisprudence in this area and protective of minority women directly and their offspring indirectly through its potential effects.

Respectfully submitted,

MORSE TAN, ESQ.
Counsel of Record
27W156 Fleming Dr
Winfield, IL 60190
(512) 289-5973
morsetan@gmail.com

February 3, 2016

---

[44] *Id.*
[45] *Id.*

Appendix

APPENDIX TABLE OF CONTENTS

Appendix A: Excerpt from 2011 Report by Life Dynamics Incorporated 1a

Appendix A
Excerpt from 2011 Report
by Life Dynamics Incorporated

Racial Targeting and Population Control

By Mark Crutcher | President, Life Dynamics Incorporated
Carole Novielli | Researcher
Renee Hobbs | Production Assistant

Chart 1 - Planned Parenthood Locations

Note: In this chart as well as the one that follows, some ZIP codes show a percentage of minorities that exceeds 100%. This occured because a small number of Hispanics identify themselves as both black and Hispanic and are, therefore, counted twice by the Census Bureau. This phenomenon is rare and was identified in fewer than 10 of the ZIP codes included in this study.

Black Population 11.5%
Hispanic Population 32.0%

TEXAS

ZIP	BLACK	COMP.	HISPANIC	
75041	10.7%	[redacted]	39.0%	[redacted]
75062	9.6%		26.9%	
75067	7.9%		16.5%	

75069	9.5%		28.5%
75074	8.1%		27.4%
75074	8.1%		27.4%
75090	12.8%	111.3%	15.4%
75110	19.4%	168.6%	19.0%
75150	10.4%		16.1%
75150	10.4%		16.1%
75160	24.0%	208.6%	14.5%
75165	13.3%	115.6%	18.8%
75231	27.2%	236.5%	40.5%
75231	27.2%	236.5%	40.5%
75237	88.6%	770.4%	7.3%
75254	9.8%		40.4%
75460	23.3%	202.6%	4.1%
75701	21.1%	183.4%	10.5%
75904	18.8%	163.4%	11.9%
76010	16.0%	139.1%	39.7%
76015	10.1%		11.7%
76021	3.5%		6.7%
76028	0.7%		5.5%
76104	57.2%	497.3%	26.2%
76114	3.3%		27.9%
76116	10.4%	155.6%	18.6%

76119	55.5%	482.6%	23.2%	
76205	7.9%		11.5%	
76240	4.3%		12.4%	
76642	17.9%		14.2%	
76661	41.5%	360.8%	16.4%	
76701	27.7%	240.8%	22.8%	
76706	13.1%	113.9%	28.1%	
76901	3.2%		26.5%	
77023	1.8%		86.0%	268.7%
77037	3.0%		64.0%	200.0%
77068	13.0%	113.0%	13.6%	
77081	9.0%		71.3%	222.8%
77340	18.7%	162.6%	13.3%	
77471	7.4%		53.1%	165.9%
77477	16.6%	144.3%	27.2%	
77539	10.7%		22.5%	
77802	6.1%		11.0%	
78201	1.9%		82.0%	256.2%
78212	2.5%		61.0%	190.6%
78217	9.3%		31.1%	
78223	4.3%		67.3%	210.3%
78227	7.9%		63.7%	199.0%
78237	2.8%		94.5%	295.3%

78238	4.7%		59.9%	
78332	0.7%		79.5%	
78363	3.9%		66.2%	
78501	0.5%		84.0%	
78521	0.3%		93.4%	
78521	0.3%		93.4%	
78539	1.4%		89.7%	
78539	1.4%		89.7%	
78550	0.9%		74.3%	

CHART 2 – INDEPENDENT ABORTION CLINIC LOCATIONS

75205	1.6%		6.2%	
75231	27.2%		40.5%	126.5%
75235	9.9%		70.3%	219.6%
75243	33.9%		14.4%	
76108	4.3%		12.6%	
76110	4.8%		62.8%	196.2%
76542	25.8%		14.8%	
77002	40.6%		22.0%	
77004	72.4%		11.8%	
77008	4.2%		43.2%	135.0%
77026	67.6%		31.1%	

77057	4.7%	[redacted]	22.6%	
77074	20.4%		43.2%	135.0%
77074	20.4%		43.2%	135.0%
77076	8.0%		72.3%	225.9%
77090	17.5%		18.4%	
77098	2.2%		17.8%	
77401	1.0%		7.9%	
77707	23.9%		7.2%	
78212	2.5%		61.0%	190.6%
78212	2.5%		61.0%	190.6%
78222	22.4%		44.0%	137.5%
78238	4.7%		59.9%	187.1%
78240	5.3%		42.5%	132.8%
78240	5.3%		42.5%	132.8%
78404	1.9%		64.6%	201.8%
78501	0.5%		84.0%	262.5%
78550	0.9%		74.3%	232.1%
78704	4.9%		34.0%	106.2%
78750	2.8%		9.8%	
78753	18.7%		38.5%	120.3%
79902	1.5%		76.1%	237.8%
79902	1.5%		76.1%	237.8%